

<b>Subject:</b>	City College 87 Preston Road Brighton BN1 4QG Request to vary the terms of the Section 106 agreement relating to planning permission BH2017/01083 (Change of use from education (D1) to 25no flats (C3) including roof conversion, insertion of mezzanine levels, installation of rooflights, replacement of windows, erection of rear infill extension at first floor level, demolition of existing building to rear of property and other associated works including cycle and bin store, new pedestrian access to the building, communal garden space and associated landscaping).
<b>Date of Meeting:</b>	15 August 2018
<b>Report of:</b>	Executive Director Economy, Environment and Culture
<b>Contact Officer:</b>	Name: Sarah Collins Tel: 01273 292232 E-mail: Sarah.collins@brighton-hove.gov.uk
<b>Wards Affected:</b>	Preston Park

## 1. PURPOSE OF THE REPORT

- 1.1 To consider a request to vary the Heads of Terms of a Section 106 Agreement signed in connection with planning application BH2017/01083, in order to amend the affordable housing requirements.

## 2. RECOMMENDATION

- 2.1 That the proposed variation to the Head of Term be agreed so that the developer is obligated to provide the affordable housing on site as set out in the s106, but with the tenure amended from 5 x affordable rented and 5 x shared ownership to 10 x shared ownership units, which would represent 40% on-site provision of affordable housing, at 100% shared ownership.

## 3. BACKGROUND INFORMATION

- 3.1 Members were Minded to Grant full planning permission at Planning Committee on 9 August 2017 for the following planning application:

**BH2017/01083** Change of use from education (D1) to 25no flats (C3) including roof conversion, insertion of mezzanine levels, installation of rooflights, replacement of windows, erection of rear infill extension at first floor level, demolition of existing building to rear of property and other associated works including cycle and bin store, new pedestrian access to the building, communal garden space and associated landscaping.

- 3.2 The granting of permission was subject to the completion of a S106 agreement containing the following Head of Term (amongst others) as set out in the original Committee report:

Affordable Housing: On site provision of 5 no. affordable rent units and 5 no. shared ownership units, which represents 40% affordable.

- 3.3 Planning Permission was granted on 20 November 2017 following completion of the s106 agreement.

#### **4. PROPOSAL**

- 4.1 The developer has written to the Council to request that, following negotiation with a Registered Provider (RP), the affordable housing is secured on site with the tenure adjusted to 10 x Shared Ownership, the same ten units as the original application (as set out in appendix 1 of the s106 agreement).
- 4.2 The proposal is made by the developer in response to a lack of interest in the affordable units from the Council's list of preferred Registered Social Landlords (RSLs). The developer has submitted letters from each of the preferred RSLs to demonstrate their lack of interest, which are provided in Appendix 1. However, one of the preferred RSLs has confirmed their interest in taking up the affordable units if they were all shared ownership (provided in Appendix 2), and therefore the proposal is made on this basis.

#### **5. COMMENT**

- 5.1 With respect to provision of affordable housing the expectation of CP20(a) is to achieve 40% affordable housing provision on sites of 15 more units, and this proposal would therefore continue to comply with this policy requirement. However, a further policy requirement is for the affordable housing provision to incorporate a mix of tenures; the policy advises that the exact split of which will be a matter for negotiation and informed by up to date assessments of local housing need and individual site and/or neighbourhood characteristics.
- 5.2 Policy CP20 lists 5 considerations for assessing the appropriate level and type of affordable housing provision:
- i. local need in respect of the mix of dwelling types and sizes including the city's need to provide more family-sized affordable housing;
  - ii. the accessibility of the site to local services and facilities and public transport;
  - iii. the costs relating to the development; in particular the financial viability of developing the site (using an approved viability model);
  - iv. the extent to which the provision of affordable housing would prejudice the realisation of other planning objectives; and
  - v. the need to achieve a successful housing development
- 5.3 The affordable housing tenure split secured for the original application BH2017/01083 (50% affordable rent; 50% shared ownership) was informed by the guidance provided in the Council's Affordable Housing

Brief (2016) and the Housing Team's response on the application was also taken into account.

- 5.4 The Housing Team's response on the original application sought a split of tenure as follows: *The Affordable Housing Brief requires a tenure mix of 55% Affordable rent and 45% Intermediate Housing (Shared Ownership), which would equate to 6 affordable rent and 4 intermediate units. A split of 5/5 would also be acceptable.*
- 5.5 However, since the original application was determined, the developer has provided evidence that none of the Council's preferred RSLs are willing to take up the affordable units with the tenure split of 5 affordable rent and 5 shared ownership units (see Appendix 1). The developer is therefore unable to meet this obligation within the s106 agreement.
- 5.6 The reasons the preferred RSLs give for not wishing to take up the units are:
- Too few affordable units within the scheme;
  - Affordable units not within separate block, therefore difficult to manage the mix of tenures;
  - Don't own the freehold therefore can't control the maintenance of the building;
  - Lack of parking and difficult access for the wheelchair unit;
  - Duplex layout would not be popular and refurbishment properties are difficult and costly to maintain.
- 5.7 It is for this reason that the developer has proposed to provide all the affordable units as Shared Ownership (10 units), which one of the Council's preferred RSLs has agreed in principle to acquire for this development (see Appendix 2). The developer has confirmed that the development cannot be implemented unless this Deed of Variation is agreed.
- 5.8 The planning and economic benefits that the implementation of this development would deliver should be taken into account: the development would provide much needed private housing, as well as policy compliant level (40%) of affordable housing (albeit 100% shared ownership), in a sustainable location with good access to shops and services and sustainable transport links, and would improve and bring into use an attractive locally listed building, and would help to secure its long-term retention and maintenance. The s106 also commits the developer to £130,835 of contributions towards local education services, recreation facilities and employment schemes.
- 5.9 It is considered that the developer has provided sufficient justification and evidence that a mix of tenures cannot be provided on site, and therefore an exception to this policy requirement within policy CP20 can be accepted in this case, taking into account the site characteristics and considerations iv and v listed in the policy (iv. the extent to which the provision of affordable housing would prejudice the realisation of other

planning objectives; and v. the need to achieve a successful housing development).

### Housing Response

- 5.10 The Housing Team welcomes the on-site provision of 40% affordable housing, and whilst a mix of tenures should be provided, accepts that there are currently difficulties with the take up of on-site provision of affordable rent units by the Council's preferred RSLs, as evidenced by the responses from the RSLs in Appendix 1. This is particularly the case with smaller numbers of units such as in this case. However, the Housing Officer has commented that their preference would be for a commuted sum towards the Council's off-site affordable housing initiatives which could benefit from additional funding.
- 5.11 The background to this is that affordable housing for rent remains a pressing need in the city and the current programme of affordable homes being developed by RSLs through S106 Agreements shows a significantly higher proportion of these as shared ownership homes - more than 80% against a preferred split of 55% affordable housing for rent and 45% shared ownership. However, this position is currently improved through the council's own affordable housing development programmes.

### Analysis

- 5.12 Following the request from the Housing Team for the developer to consider offering a commuted sum, the developer has calculated that the maximum they can viably offer would be a commuted sum of £358,570 towards off-site affordable housing, once 23 of the 25 units have been sold or occupied, but with this offer there would be no on-site provision of affordable housing.
- 5.13 In response to this offer, Housing recommend that we accept either the 40% on site affordable housing with 100% as shared ownership units, OR the commuted sum of £358,570 towards off-site affordable housing.
- 5.14 However, this commuted sum would represent significantly less than 40% affordable housing, has not been reviewed by the DVS and would provide no on-site affordable housing (which is a policy CP20 requirement). It is therefore considered that the commuted sum offer has not been fully justified and could therefore not be accepted as an exception to policy CP20.
- 5.15 In conclusion it is considered that a Deed of Variation to allow a change in the tenure mix from 5 x affordable rented and 5 x shared ownership to 10 x shared ownership units, should be accepted. This is on the basis that policy CP20(a) would be complied with which requires 40% on-site provision of affordable housing, and that in this case sufficient evidence has been made to justify an exception to the policy requirement for a mix of affordable tenures.

Background Documents:  
Planning Application BH2017/01083

